

REMARKS

Reconsideration is requested.

Claims 67-96 are pending.

Claims 89 and 90 have been amended above with regard to the dependency of the claims. No new matter has been added.

The applicants again elect, with traverse, the subject matter of the Examiner's Group I stated in the Office Action dated July 25, 2002. See, page 2 of the Amendment filed August 26, 2002, wherein the subject matter of Group I was previously elected.

The applicants further elected the recombinant envelope defined in (i) on page 2 of the Office Action dated July 25, 2002.

The applicants further requested withdrawal of the restriction requirement of July 25, 2002 as the applicants believe the search of all the claimed subject matter would not be an undue burden on the Examiner.

More specifically, the Examiner was requested to examine the subject matter of Groups I and II of the Office Action of July 25, 2002; together as the search of the subject matter of Group I is thought to necessarily include the search of the subject matter of Group II. The Examiner was urged to appreciate that the sequences of claim 75, which the Examiner previously identified as a separate Group (i.e., Group II) are exemplifications of the proteins as described in claims 67-74. That is, the applicants believe that allowance of the generic claim of, for example, claims 67-74, should include allowance of a specific claim, such as claim 75. More specifically, the SEQ ID numbers

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recited in claim 75 are examples or exemplifications of the subject matter of claims 67-74, as indicated in the applicants Amendment of August 26, 2002.

Rather than respond to the applicants comments of August 26, 2002, the Examiner has required a further election and apparently indicated that the applicants had previously elected Group II of the Office Action of July 25, 2002. The applicants, in fact, elected Group I of the Office Action of July 25, 2002. Specifically, the Examiner's indication that the newly added claims 95 and 96 are grouped in the "elected Group II" on page 2 of the Office Action of November 5, 2002, is inconsistent with the applicants actual election in the Amendment of August 26, 2002 and the Examiner is requested to clarify the record and issue a new Action clearing the record.

typo graph, l/r

The new Action is requested to include a complete statement of the restriction requirement and election of species requirement which allows the applicants an opportunity to respond to a complete statement of the Examiner's position.

The Examiner's suggestion that the further restriction of a specific vector and HCV sequences based on the addition of new claims 95 and 96 in the Amendment of August 26, 2002, is not believed to be appropriate. The various vectors and sequences which are the subject of new restriction requirement were pending at the time of issuance of the earlier Office Action of July 25, 2002, and could have been the subject of the restriction requirement issued in the Office Action of July 25, 2002. The Examiner's further restriction requirement in the Office Action of November 5, 2002, is submitted to be, with all due respect, an inefficient and unnecessary use of the resources of the Patent Office as well as the applicants. The Examiner is requested to state the restriction

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requirement in a complete new Action which vacates the Office Action of November 5, 2002, and allows the applicants an opportunity to respond from a new time period set by the mailing of the new Action.

Moreover, the Examiner's correction of the record in the new Action is requested with regard to the listing of the pending claims. Specifically, page 2 of the Office Action dated November 5, 2002, indicates the claims ^{typo} 64-96 are pending and yet claims 49-66 were canceled in the Amendment of August 26, 2002. Correction of the record in this regard is requested in the new Office Action.

The Office Action of November 5, 2002, is incomplete in not reciting all of the expression vectors of the claims. Specifically, claims 87-91 recite the following vectors: a live recombinant recombinant vector, a vaccina virus vector, an avipox vector, an Ankara Modified Virus vector, and a baculovirus vector. The Examiner however indicates that the expression vectors of claims 87-91 only include the avipox vector, the Ankara Modified Virus vector and a baculaovirus vector. By requiring a further election of an expression vector in the Office Action of November 5, 2002, as opposed to a species election for initial examination, the Examiner has denied the applicants the opportunity to pursue the complete breadth of subject matter as to what the applicants believe defines their contribution to the art. Accordingly, in the event the Examiner continues to believes an election of one of the expression vectors is required, the new Office Action should include a complete list of the vectors of the claims. Such a requirement should not be made however as the present inventions concerns recombinant vectors comprising an E1 nucleotide sequence which is considered to be a unifying

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aspect, clearly reflected in claims 87-91 which are dependent on claim 67. Moreover, examination of claims 67 on the merits would eventually also include examination of the vectors of the dependent claims. Search of the subject matter of claims 87-91 therefore will not be an undue additional burden on the Examiner. Such a further requirement should not be made in the new Action.

In an effort to be responsive to the Office Action of November 5, 2002, even though a new Action should be issued, the applicants elect, with traverse, a vaccina virus vector as recited in claim 88. Moreover, the applicants elect, with traverse, the subject matter of (i) on page 2 of the Office Action of November 5, 2002. The applicants further elect, as a species election for initial examination, with traverse, the subject matter of (a) stated on page 3 of the Office Action of November 5, 2002, and the subject matter of (3c) on page 4 of the Office Action of November 5, 2002.

The applicants further note in this regard that the comment on page 4 of the Office Action of November 5, 2002, that claim 96 is included in Group I is contrary to the Examiner's statement on page 2 of the Office Action of November 5, 2002, that claim 96 is included in Group II. Clarification is requested in this regard in the new Office Action.

In the new Office Action, the Examiner is further requested to clarify why the recombinant vectors of Groups I and II of the Office Action of July 25, 2002, are separately classified as Group I includes claims to "recombinant vectors comprising a HCV envelope protein" whereas Group II includes claims to "recombinant vectors comprising a specific heterologous sequence". The specific heterologous sequence clearly is also encoding a HCV protein. The separation of Groups I and II thus appears to

be unnecessarily artificial. The Examiner is urged to appreciate that in the event the Examiner maintains the restriction requirement, the applicants will be unnecessarily burdened with additional costs and time in obtaining protection of all of the disclosed subject.

The Examiner's requirement for a species election of a specific antigen is not believed to be appropriate. The Examiner is urged to appreciate that recombinant vectors comprising an E1 nucleotide sequence, as claimed, is a unifying aspect, as clearly reflected in claims 68-70 which are dependent on claim 67. The examination of claim 67 on the merits would ultimately include examination of the indicated antigens. Accordingly, further election should not be required. Similarly, the species election with regard to the antigens listed on page 4 of the Office Action of November 5, 2002, is believed to be inappropriate. Examination of the subject matter of claim 67 on the merits would include search of the subject matter of the further election requirement.

The Examiner is requested to issue a new Action, as described above, for clarity and completeness of the record.

Respectfully submitted,

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS

89. (Amended) The recombinant vector according to claim 67 [88], wherein said vector is avipox.

90. (Amended) The recombinant vector according to claim 67 [88], wherein said vector is Ankara Modified Virus (AMV).